IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Devendra Kumar vs. The State of Rajasthan.

D.B.Cri. Appeal No.1174/2003

Under Section 374 (2) Cr.P.C. against the judgment dated 06.10.03 passed by the Addl. Sessions Judge (Fast Track), Bikaner in Sessions Case No.108/2001.

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Date of Judgment: 03rd August, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.H.S.S.Kharlia for the appellants.
Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The present appeal has been filed by accused appellant Devendra Kumar, against the decision of the Addl. Sessions Judge (Fast Track), Bikaner, in Sessions Case No.108/2001 dated 06.10.03.

The case of the prosecution started with the lodging of a written report by complainant Rajendra Kumarm, PW/3 at Police Station Nokha, on 05.02.00 alleging that Kanchan d/o Hanuman Prasad is his sister's daughter and lives in Ganganagar. 3-4 years before, the accused Devendra Kumar was married to her. In marriage sufficient presentations were made. After marriage Kanchan gave birth to a female child by cecerian. That child is surviving. In the meanwhile, the in laws started maltreating her and started raising demands. She was persecuted and then she has either committed suicide or has been killed. On this report, a case under section 304 and 498A IPC was registered . The circle officer, Nokha, started investigation. After investigation, police filed a charge sheet under section 302 and 498A IPC. The case was committed to the court of Sessions, from where it was transferred to the trial court. The trial court framed charges against the accused u/s 302 and 498A IPC, which the accused denied and claimed trial.

At the trial, 13 witnesses were produced and 34 documents were exhibited. The accused was examined under section 313 Cr.P.C. 3 defence witnesses were examined and 9 documents were exhibited. The accused appellant, after trial was convicted under section 302 IPC and was acquitted of the charges under section

498A IPC. Under Section 302 IPC he was sentenced to life and a fine of Rs.5,000/- .

The learned counsel for the appellant urged that the whole case which the prosecution pressed against the accused appellant was circled around cruelty and cruelty related to demand of dowry. But neither a charge was framed in that relation under Section 304B IPC and the charge which was framed under Section 498A IPC has resulted into acquittal. In that view of the matter, the prosecution case for persecution of the lady for dowry has been negated by the court in its entirety. The case has squarely been limited to the fact of death of the deceased and complicity of the accused has to be judged for offence under section 302 IPC.

The learned counsel for the accused pointed out that no doubt, this is a fact that the deceased has died of burns, an unnatural death but there is no evidence produced by the prosecution to the effect that in her burning, accused had anything to do. Since there is no direct evidence available, the trial court had to rest contended with circumstantial evidence and the case has to be considered in that light only.

The learned counsel has drawn our attention towards the statement of the prosecution witnesses ,who have stated that in the investigation, no case of dowry death was found. In this relation , the learned counsel for the accused has referred to the statement of prosecution witness . One of them is PW/7 Kanhaiya Lal , Dy.S.P. who has stated as under:-

> "यह सही है कि इस प्रकरण की तपतीश के बाद इसे दहेज हत्या का मामला नहीं माना।"

Another prosecution witness , PW/12 Om Prakash, SHO has stated as below:-

> "यह सही है कि अनुसंधान अधिकारी ने मृतका की मृत्यु दहेज के कारण नहीं मानते हुए 304-B के स्थान पर 302 भारतीय दण्ड संहिता का अपराध माना है।"

Thus, the learned counsel has stated that of fence relating

to dowry has been not only doubted by police witnesses as aforesaid, it has been doubted by one of the prosecution witness, who is the relation of the deceased stated in following terms:-

PW/1 Sri Krishan states as under:-

"यह कहना सही है कि मेरे सामने कभी भी ऐसा कोई तथ्य नहीं आया कि देवेन्द्र कंचन को दहेज के हेतु कभी भी तंग व परेशान करता हो।"

Thus, the case squarely was one of the nature where it is clearly made out that there was nothing like persecution of the lady for demand of dowry.

Now the case has to be seen from the light of the circumstances, which the learned trial court has found established against the accused. The first circumstance found to have been pressed into service against the accused is to the effect that he has not tried to extinguish the fire which was responsible for killing her. The learned counsel has stated , on the strength of the statements of certain witnesses wherein the prosecution witnesses have stated as

follows:-

PW/1 Sri Krishan has stated as follows: -

"हमने देखा तो वह बच्ची आधी कमरे में व आधी बरामदे में पड़ी थी, उल्टी पड़ी थी, देखा तो ऊपर से सारी की सारी जली हुई थी, उसके पैरों के बीच में एक रजाई, एक कम्बल व चदर थी।"

This witness in his police statement Ex.D/1 has stated in the portion A to B as under:-

"उसके शरीर पर रजाई कम्बल चद्दर डाली हुई थी"

Another prosecution witness PW/3 Rajendra Kumar, the maternal uncle of the deceased , has stated as follows:-

"कंचन की लाश ब्रामदे व कमरे के

बीच उल्टी पड़ी थी, नंगी थी सिर्फ उसने एक अंडरविअर पहना हुआ था। लाश के नीचे गद्दा था लाश के पैरों के बीच में जला हुआ रजाई व कम्बल पड़ा था।"

Another prosecution witness, PW/5 Surja Ram , who came after hearing the hue and cry of the appellant, has stated as follows:-

"रसोई व कमरे के बीच धूआं हो रहा था, जो रसोई की तरफ हो रहा था वहां फर्श पर पानी पड़ा हुआ था"

"क्योंकि कंचन के शरीर के पास जमीन में पानी गिरा था इसलिए कहता हूँ कि वह पानी अभियुक्त ने ही आग बुझाने के लिए कंचन पर डाला था । यह सही है कि कंचन को जलने से बचाने के लिए उस पर रजाई गद्दा, कम्बल, चद्दर डाला था।"

Thus, the learned counsel argued that every effort was made by the accused to extinguish the fire by using a blanket, a quilt

and water. The deceased had burnt by kerosene oil , a petroleum product. It gets inflamed so vigorously that any rescue operation has to be made within very short span of time and in that view of the matter , if the accused used a blanket, a quilt and water then perhaps in arranging all the three items time must have consumed . Therefore the circumstances held proved against the accused in this light by the trial court turns to be out of place.

Another circumstance pressed against the accused person is to the effect that he has not called the neighbors to help him. The learned counsel for the accused has drawn our attention towards the statement of PW/1 Sri Krishan, who has stated as below:-

"देवेन्द्र के मकान के आसपास के सब क्वाटर बंद थे किसी में भी रिहायश नहीं थी। केवल दो क्वाटर छोड़कर कोई रहता था वह भी उस दिन बाहर (बन्द) था।"

He has also drawn the attention of the court towards the statement of P/5 Surja Ram, who has stated as under:-

"रात को देवेन्द्र ने आवाज दी कि सुरजारामजी आओ, कंचन जल रही है, कंचन जल रही है। वह बुरी तरह से चिल्ला रहा था।"

In view of these statements, the learned counsel has stressed that the place where the deceased and the accused were living was not in a thickly populated area, and PW/5 Surja Ram has admitted that he was called and thus the circumstantial proof cannot be found established.

The third circumstance was that the accused had tried to conceal the evidence, after the death and false explanation of the accused. The accused in his statement has stated that they had come from a journey. He was tired, therefore, he slept. To discredit or disbelieve this statement, there is nothing on record to suggest and in that light of the matter, these circumstances cannot be held proved against the accused. The learned counsel stressed that the circumstances which have been narrated herein above , are more in the nature of presumption, than proof . They do not establish a chain of circumstances. The learned counsel further has stated that saying

that there was no reason for committing suicide and, therefore, homicide has to be proved, is another inference which is against the criminal jurisprudence as it exist in India.

Per contra, the learned Public Prosecutor, submitted that the circumstances are indicative of the implication of the accused. The wife has died an unnatural death and responsibility lay on the husband to clearly make out a case wherein his implication was not there. The circumstances are not clear enough to establish that the husband was not involved and, therefore, the trial court in assuming all of what was required to be done by the husband, having not been done, held that the omission was on his part. Such omissions are of the nature that they conclusively establish that he was guilty of the offence alleged and in that view of the matter, the findings of the trial court cannot be disputed and doubted.

We have heard the learned counsel and have given our thoughtful consideration to the facts obtaining on record. .

The first circumstance, as has been discussed by the learned trial court, is to the effect that the accused has not tried to save the deceased. The statement of the witness quoted herein above,

and as has been pointed out by the learned counsel for the defence, establish that it would not be correct to assume that no effort was made by the husband to extinguish the fire, in whatever time available with him. He had arranged a quilt, a blanket and some water and thus had utilised all those resources which were at his command, to extinguish the fire. In a case of inflammable material being used, the fire spread so fast that the person facing the situation can do a very little assistance, to extinguish the fire and rescue the victim. In the instant case, three different methods having been adopted, it cannot be conclusively said that there was no effort on the part of the accused to have made best use of his wits at that particular juncture, and in that view of the matter, we feel that the first circumstance have wrongly been held proved against the accused.

The second circumstance pressed against the accused is to the effect that he did not call the neighbours for help. In this regard notice may be taken to the fact that the place where the accused is living is not a thickly populated area. The nearby quarters are not habited and it cannot be said that none arrived at the scene of occurrence. PW/5 Surja Ram is a neighbour, who had arrived on the scene of occurrence and thus, is not a matter where he tried not to raise an alarm on the occasion. Who so ever was available, or could

consider the attending circumstance, arrived and in that view of the matter, the second circumstance, as used by the learned trial court, also cannot be said to be conclusively indicative of the circumstance, which has been pressed into service against the accused.

The third circumstance used is that he has tried to conceal the evidence. On this aspect the finding of the learned trial court are based on conjunctures. The trial court has put the burden on accused in such a manner, as was required to be placed on the prosecution. In our view, the circumstances indicated and found established, do not make out a change of circumstance, complete enough to establish that the accused was guilty of the offence as alleged.

The prosecution witnesses, having taken recourse to establish a case under Section 304B IPC, have failed to realise that they were to establish a case under Section 302IPC and, therefore, the efforts of the prosecution witnesses were misdirected and in that view of the matter, we are persuaded that the conviction, as recorded against the accused, is wrong. Accused is not guilty of the charges as held proved against him and he deserves the benefit of doubt. The other circumstances are so trifle and mundane that they have been

given undue importance. Hence does not deserve our notice.

In the result, the appeal is allowed. The accused appellant Devendra Kumar is acquitted of the charges levelled against him. His conviction under Section 302 IPC is set aside . Consequently, his sentence is also set aside. He is behind the bars, he should be released forthwith, if not required in any other case.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

L.George